IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES G. PARKS, JR.,	§	
	§	No. 408, 2010
Defendant Below-Appellant,	§	
	§	
	§	Court Below—Superior Court
v.	§	of the State of Delaware
	§	in and for New Castle County
JOHN PETROLEUM, INC.,	§	C.A. No. 06C-10-039
	§	
Plaintiff Below-Appellee.	§	
	§	

Submitted: February 11, 2011
Decided: April 12, 2011

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

O R D E R

This 12th day of April 2011, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The defendant-appellant, Charles G. Parks, Jr. ("Parks"), filed an appeal from the Superior Court's June 4, 2010 decision accepting in part the Superior Court Commissioner's July 31, 2009 Report and Recommendation and recommitting the matter to the Commissioner for re-calculation of the damages owed by Parks and entry of judgment.[1] We find no merit to the appeal. Accordingly, we affirm.

[1] Pursuant to Super. Ct. Civ. R. 132(a)(4)(iv), "[a] judge of the [Superior] Court shall make a *de novo* determination of those portions of the report . . . to which an objection is

(2) The record reflects that, in November 1996, the plaintiff-appellee, John Petroleum, Inc. ("JPI"), leased a gas station and delicatessen on Philadelphia Pike, Wilmington, Delaware, to Eastern Petroleum, Inc. Attached to the lease was a Guaranty that permitted assignment of the lease to a guarantor who would be liable with the tenant for the payment and performance of the tenant's obligations under the lease. The lease was modified in 1997, 1999 and 2000 to provide for changes in the amount of rent. In 2000, the lease was assigned to F. Warren Harris, Sr. & Son, LLC. In 2002, that entity assigned the lease to Parks, a Connecticut attorney. In 2004, Parks in turn assigned the lease to Urso Enterprises, Inc. ("Urso").

(3) The language of the 2004 assignment explicitly provided that, ". . . [f]or a period of Five (5) years, up to and including the 20th day of May 2009, [Parks] shall remain obligated to Landlord pursuant to the Third Amendment, dated April 21, 2002, which shall remain in full force and effect as to [Parks] until that date." Under the April 21, 2002 Third Amendment, Parks agreed to "assume all of the obligations of the Tenant under the Lease."

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made. A judge may accept, reject, or modify, in whole or in part, the findings or recommendations of the Commissioner. A judge may also . . . recommit the matter to the Commissioner with instructions."

(4) Soon after taking possession in 2004, Urso defaulted on the rent. After giving Urso several opportunities to cure the default, all of which were unsuccessful, JPI started eviction proceedings. In October 2004, JPI sent a certified letter to Parks informing him of Urso's default. JPI took possession of the property in August 2005. The buildings and grounds had sustained substantial damage and a display case, grill and meat slicer were missing from the delicatessen. After making a number of costly repairs, JPI leased the property to another party in December 2005. In October 2006, JPI filed suit against Urso, Peter A. Urso and Parks. Default judgment was entered against Urso and Peter A. Urso in February 2008.

(5) JPI's claims against Parks were tried before a Superior Court Commissioner in June 2009. The Commissioner found Parks liable for rent from July to December 2005, past due taxes, as well as an insurance premium on the property and damages to the property in the total amount of $78,834.94. Parks appealed to the Superior Court from the Commissioner's report and recommendation. The Superior Court adopted the bulk of the Commissioner's findings, but remanded the matter to the Commissioner for re-calculation of damages, directing him to include in the amount of the damages an additional $28,538.75 in past due rent, bringing the total amount of damages to $107,373.69. On June 8, 2010, the Commissioner modified

the amount of the damages in accordance with the Superior Court's direction and requested the Prothonotary to enter judgment against Parks in that amount.

(6) In its June 4, 2010 decision, the Superior Court concluded that Parks assumed the status of "guarantor" under the unambiguous language of the lease agreement, including the 2004 assignment, by virtue of his own admission at the hearing before the Commissioner and under Delaware law.[2] Contrary to Parks' argument, the Superior Court also concluded that, in accordance with the agreement, as well as the applicable law, Parks was not entitled to written notice from JPI of Urso's breach.[3] The Superior Court also concluded, based upon the evidence adduced at the hearing, that JPI made reasonable efforts to mitigate Parks' damages by making repairs to the property and re-letting it within a reasonable time. Finally, the Superior Court concluded that Parks' affirmative defenses of estoppel and waiver were unsupported by the evidence adduced at the hearing.

(7) In his appeal from the Superior Court's decision, Parks claims that the Superior Court's decision was legally erroneous because a) he did

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[2] *Schwartz v. Centennial Ins. Co.*, 1980 WL 77940 (Del. Ch. 1980) (citing, *inter alia*, 4 Corbin, *Contracts*, §866; Restatement, Second, *Contracts*, §150; 6 Am. Jur. 2d, *Assignments*, §110).

[3] *Orange Bowl Corp. v. Warren*, 386 S.E. 2d 293, 295 (S.C. Ct. App. 1989). Nevertheless, JPI did send a certified letter to Parks at his business address on October 7, 2004 notififying him of Urso's breach, a fact undisputed by Parks at the hearing.

not receive legally sufficient notice of Urso's default or a legally sufficient demand for performance by JPI; b) JPI implicitly abandoned the guaranty and waived any recourse against him; c) the damages incurred by Urso were not foreseeable; and d) his affirmative defenses were not adequately considered by either the Commissioner or the Superior Court.

(8) Under Delaware law, all rights and remedies under a commercial lease agreement are governed by general contract principles.[4] According to such principles, contracts must be construed as a whole, to give effect to the intentions of the parties.[5] Where the language of the contract is clear and unambiguous, the parties' intent is ascertained by giving the language its ordinary and usual meaning.[6] A contract is ambiguous only when its provisions are reasonably or fairly susceptible of different interpretations or may have two or more different meanings.[7]

(9) An appeal to this Court from a decision of the Superior Court is based upon the law and the facts.[8] This Court will accept the findings of the Superior Court if they are sufficiently supported by the record and are the product of an orderly and logical reasoning process, even if independently

[4] Del. Code Ann. tit. 25, §5101(b).
[5] *Northwestern Nat'l. Ins. Co. v. Esmark, Inc.*, 672 A.2d 41, 43 (Del. 1996).
[6] Id.
[7] Id.
[8] *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972).

we would have reached a different conclusion.[9] Only when the Superior Court's findings are clearly wrong and justice requires their overturn will we decline to accept them.[10] We review conclusions of law *de novo*.[11]

(10) We have carefully reviewed the Commissioner's July 31, 2009 report, the Superior Court's June 4, 2010 decision, as well as the record in this case. We conclude that there was no legal error or abuse of discretion on the part of the Superior Court and that its factual findings, including the amount of damages owed by Parks, are supported by the record and are the product of an orderly and logical deductive process. We affirm the Superior Court's judgment on the basis of its well-reasoned decision dated June 4, 2010.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

[9] Id.
[10] Id.
[11] *State Farm Mut. Ins. Co. v. Clarendon Nat'l. Ins. Co.*, 604 A.2d 384, 387 (Del. 1992).